

***United States Court of Appeals
for the Second Circuit***



**PETITIONER'S
BRIEF**

Cont

754101

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ROBERTE NOEL,

Petitioner,

- v -

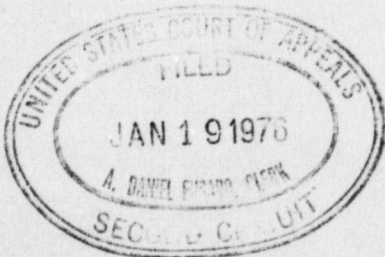
IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

Docket No. 75-4101

B
P/S

APPENDIX TO PETITIONER'S BRIEF



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JANUARY, 1976

PAGINATION AS IN ORIGINAL COPY

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TO PETITIONER DATED APRIL 17, 1974

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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:
ROBERTE NOEL,
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Petitioner,
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- v - Docket no. 75-4101
:
IMMIGRATION AND NATURALIZATION
SERVICE,
:
Respondent.
:
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APPENDIX TO PETITIONER'S BRIEF

DECISION OF THE BOARD OF IMMIGRATION
APPEALS, DATED MAY 5, 1975

CHARGE:

ORDER: Section 241(a)(2), I&N Act (8 U.S.C. 1251
(a)(2) - Nonimmigrant visitor - remained
longer

APPLICATION: Withholding of deportation under section
243(h)

This is an appeal from an order of an immigra-
tion judge, dated January 10, 1975, which finds the
respondent deportable as charged, denies her application

for withholding of deportation under section 243(h) of the Immigration and Nationality Act, and which grants her the privilege of voluntary departure. The appeal will be dismissed.

The respondent, who is a native and citizen of Haiti, entered the United States on or about October 27, 1969 as a nonimmigrant visitor authorized to remain until July 25, 1970. She has remained beyond that date without permission. The allegations contained in the Order to Show Cause were admitted and deportability was conceded. Our review of the record satisfies us that deportability has been established by evidence which is clear, convincing and unequivocal.

The application for withholding of deportation is based on the respondent's claim (1) that her father is married to a sister of the former president of Haiti, Magliore; (2) that her father served as a captain during the incumbency of President Magliore; and (3) that in 1963 she, her father and half brother were arrested by the government of Francois Devalier. She fears persecution if returned to Haiti.

After examining the respondent's testimony, the immigration judge found that the respondent had failed to establish that she has a well-founded fear that she would be persecuted by reason of her race, religion, political opinion, nationality or membership in any particular social group as required under the provisions of section 243(h) of the Immigration and Nationality Act.

After carefully considering the evidence of record and the representations of counsel on appeal, we find that the respondent has failed to show a well-founded fear that her life or freedom will be threatened in Haiti on account of her race, religion, nationality, membership of a particular social group or political opinion. We therefore conclude that she will not be subject to persecution if deported there. See Matter of Dunar, Interim Decision 2192 (BIA 1973). We accordingly shall uphold the immigration judge's decision and dismiss the appeal.

ORDER: The appeal is dismissed.

FURTHER ORDER: Pursuant to the immigration judge's order, the respondent is permitted to depart

from the United States voluntarily within 30 days from the date of this order or any extension beyond that time as may be granted by the District Director; and in the event of failure so to depart, the respondent shall be deported as provided in the immigration judge's order.

Chairman

DECISION OF THE IMMIGRATION JUDGE,
DATED JANUARY 10, 1975.

CHARGE: I & N Act - Section 241(a)(2) (8 USC 1251
(a)(2)) - Nonimmigrant visitor - remained
longer

APPLICATION:

Voluntary departure, withholding of deportation to Haiti pursuant to Section 243(h).

DECISION OF THE IMMIGRATION JUDGE

The respondent is ^Amarried female alien, a native and citizen of Haiti, who entered the United States at Miami, Florida on or about October 27, 1969. The respondent was then admitted as a nonimmigrant visitor for pleasure and were thereafter authorized to remain in the United States until July 25, 1970. She remained

beyond that date without authority and is subject to deportation on the charge set forth in the Order to Show Cause, as she concedes.

The respondent has declined to make any selection of a place of deportation. She has been advised that Haiti would be named in the event deportation is ordered. She has requested the withholding of deportation to Haiti under Section 243(h) contending that, by reason of her political opinions, she would be subject to persecution if returned to Haiti. She has also applied for voluntary departure.

The respondent claims that her father is married to a sister of former President Magliore of Haiti. She testified that her father was not married to her natural mother. However, after he was married he brought the respondent into his home and she was raised there by his wife. The respondent claims that her father served as a captain during the incumbancy of President Magliore. She further claims during 1963 or 1964 her father, his wife their son, respondent's half brother, were arrested by the government of Francois Duvalier. However, it appears that they were released

almost immediately. That is the father and the son were immediately released but the woman was detained for a period of approximately one month. Other than that incident the respondent makes no specific reference to any untoward event up until a time shortly before her departure from Haiti in 1968. This incident apparently occurred sometime in 1967. She says at that time another employee working in the same office, where she was employed as a secretary, complained to the Secret Police claiming that her father was an enemy of the government. As a result, she says that she left her employment. Later she left the country going to Guyana with her husband. The respondent and her husband remained in Guyana for a year after which he returned to Haiti. He is still living there with respondent's four children who range in age from 8 to 11 years.

The respondent has not presented any evidence other than her own testimony in support of her claim. To give credence to the claim requires that we accept it without taking cognizance of the events in Haiti over the past seventeen years. The fact is that Magliore was

not in power in Haiti at any time after 1957. Even accepting the respondent's testimony nothing untoward occurred between the advent of the Devalier in 1957 until 1963 or 1964. Even then nothing amounting to persecution ever happened to the respondent. Even the respondent's natural father and his son do not appear to have been subjected to any mistreatment other than perhaps a brief period of detention from which they were immediately released, although the respondent claims that they are required to report regularly to the police. With regard to the respondent herself, the only thing which she claims occurred was a protest by one of her fellow workers that she should not be employed because of her father's aid in being an enemy of the government.

How the fact of her employment would have escaped the notice of the government if they had any interest in her or her political view is difficult to understand. She completed her education, worked as a secretary was married and had four children. The only difficulty which is reported to us is this protest by

one of her fellow workers. Moreover, this occurred in 1967 and she did not leave Haiti until the middle of July 1968 when she and her husband left for Guyana. In 1969 her husband returned to Haiti where he is presently living with the four children.

On the basis of the entire record, I find that the respondent has failed to establish that she has a well founded fear, as contemplated by Section 243(h) that she would be persecuted by reason of her race, religion, political opinion, nationality or membership in any particular social group. The respondent has applied for the privilege of voluntary departure and that privilege will be authorized in the exercise of discretion.

ORDER: IT IS ordered that in lieu of an order of deportation the respondent be granted voluntary departure without expense to the government on or before February 10, 1975 or any extension beyond that date may be granted by the District Director and under such conditions as the District Director shall direct.

IT IS FURTHER ORDERED that if the respondent fails to depart when and as required the privilege of voluntary departure shall be withdrawn without further notice or proceeding and the following order shall thereupon become immediately effective: The respondent shall be deported from the United States to Haiti on the charges contained in the Order to Show Cause.

IT IS FURTHER ORDERED that the request for the withholding of deportation pursuant to Section 243(h) be denied.

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

MATTER OF

FILE A- 20 095 134 - New York

Roberte Noel

IN Deportation PROCEEDINGS

TRANSCRIPT OF HEARING

Before: Francis J. Lyons, Immigration Judge

Date: September 10, 1974 Place: 20 West Broadway, New York, N.Y.

Transcribed by Essie Perry Recorded by Lanier

Official Interpreter Kata Wahl

Language French

APPEARANCES:

For the Service:

Allan Shader, Esq.

Trial Attorney

New York, New York

Station

For the Respondent:

Claude Henry Kleefeld, Esq.

William Navero, Esquire of

Counsel

Suite 400

100 West 72 Street

New York, New York 10023

1 IMMIGRATION JUDGE TO RESPONDENT (THROUGH OFFICIAL INTERPRETER):

2 Q What is your name?

3 A Roberte Noel

4 Q And Mr. Navero from Mr. Kleeffeld's office is your attorney?

5 A Yes, sir.

6 IMMIGRATION JUDGE: Are you ready Mr. Navero?

7 MR. NAVERO: Ready your honor.

8 IMMIGRATION JUDGE TO RESPONDENT:

9 Q Will you stand and raise your right hand to be sworn. Do you
10 solemnly swear to the testimony that you will give in this
11 proceeding will be the truth, the whole truth and nothing but
12 the truth so help you God?

13 A I do.

14 IMMIGRATION JUDGE: Mr. Navero, do you on behalf of your client concede
15 Service of the Order to Show Cause?

16 MR. NAVERO: Service is conceded.

17 IMMIGRATION JUDGE: Do you waive the reading of the contents?

18 MR. NAVERO: The reading is waived your honor.

19 IMMIGRATION JUDGE: On her behalf do you concede the truth of the
20 five factual allegations in the order?

21 MR. NAVERO: They are so conceded, yes.

22 IMMIGRATION JUDGE: And deportability on the charge?

23 MR. NAVERO: Deportability is also conceded, yes.

24 IMMIGRATION JUDGE TO RESPONDENT:

25 Q Mrs. Noel in the event you are to be ordered deported from the
26 United States you have the right to name the country to which you

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

United States Department of Justice — Immigration and Naturalization Service

1 wish to be sent? If you were to be ordered deported from the
2 United States to what country would you want to be sent?

3 A I would like to go to Canada because my brother is living in
4 Canada.

5 Q Have you ever been a resident or citizen of Canada?

6 A No, sir.

7 Q In that event you may not select Canada. Do you wish to make
8 any selection of a country?

9 A It would be difficult for me to alone in another country this
10 might be quite difficult for me.

11 Q Is there any reason why you could not return to Haiti?

12 A No, I couldn't go back there because my family has been
13 persecuted and I myself have been persecuted.

14 IMMIGRATION JUDGE: Mr. Navero?

15 MR. NAVERO: Yes.

16 IMMIGRATION JUDGE: I take that there is no designation of a country.

17 MR. NAVERO: Apparently not your honor as I said the respondent says
18 that she has a brother in Canada and—

19 IMMIGRATION JUDGE: There is no country of designation.

20 MR. NAVERO: No, your honor we are invoking provisions of the Section
21 243(h) of the Immigration law.

22 IMMIGRATION JUDGE: You are going to ask for withholding of
23 deportation to Haiti.

24 MR. NAVERO: That is true your honor.

25 IMMIGRATION JUDGE: All right are you ready to file that today?

26 MR. NAVERO: Yes, your honor.

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 IMMIGRATION JUDGE: Yes, do you have the application prepared?

2 MR. NAVERO: Yes, we do.

3 IMMIGRATION JUDGE: All right the application has been receipted and
4 marked as Exhibit 3. Before you go ahead is there an alternative
5 an application for voluntary departure?

6 MR. NAVERO: Yes, your honor.

7 IMMIGRATION JUDGE: All right go ahead.

8 MR. NAVERO TO RESPONDENT:

9 Q Are you now or have you ever been a member of the communist
10 party?

11 A No.

12 Q If granted voluntary departure would you leave when the time
13 ordered and pay your own passage to any point out of the United
14 States?

15 A Yes, sir.

16 Q Now in reference to—you stated that you could not go back
17 to Haiti is that true?

18 A No, I can not.

19 Q Now you also stated that that was because you and your family
20 were being persecuted down there. Is that true?

21 MR. SHADER: I am going to object to that.

22 IMMIGRATION JUDGE: Obviously, if you give her the answer and she says
23 yes, it has very little value, but I'll allow it.

24 MR. NAVERO: She said that herself your honor.

25 IMMIGRATION JUDGE: All right go ahead Mr. Naverro.

26 MR. NAVERO: All right sir.

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

IMMIGRATION JUDGE TO RESPONDENT:

Q Now who do you mean by your family?

A I mean the Magliore family.

Q Are you a member of the Magliore family?

A Yes, I am.

Q How?

A My father had married to a sister of President Magliore.

Q How old are you?

A I am 38 now.

IMMIGRATION JUDGE: Go ahead Mr. Naverro.

MR. NAVERO TO RESPONDENT:

Q Now you say that your father was related to the Magliore family.

Is that correct?

A Yes.

Q Were you ever arrested?

A No.

IMMIGRATION JUDGE: All right Mr. Shader.

MR. SHADER: I have a statement which was forwarded to the Department of State, Office of Refugee and Migration Affairs.

IMMIGRATION JUDGE: Mr. Naverro does this embody the substance of her claim?

MR. NAVERO: That is true your honor.

IMMIGRATION JUDGE: Now is there anything additional? Anything to be developed?

MR. NAVERO: I would like to lay on the line one or two things here.

IMMIGRATION JUDGE: Before you go ahead, I will mark the District

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 Directors letter to State as Exhibit 3. Application for
2 Section 243(h) is Exhibit 2. All right, Mr. Navero go ahead.
3 MR. NAVERO: Yes, sir, may I please. May I point out your honor from
4 the letter from the State Department that is the letter to the
5 State Department that she fled Haiti and went to French Guyana.

6 IMMIGRATION JUDGE: Yes, I noticed that.

7 MR. NAVERO: So therefore her fears are substantial.

8 MR. SHADER: I will object to such argument.

9 IMMIGRATION JUDGE: Don't tell me about it. Ask her about it.

10 MR. NAVERO TO RESPONDENT:

11 Q When you first left Haiti where did you go?

12 A I went to French Guyana.

13 Q Why did you go to French Guyana?

14 A Because I had to. I wanted to leave Haiti.

15 Q Why did you want to leave Haiti?

16 A I was afraid of a number of things.

17 Q How long did you remain in French Guyana?

18 A 1 year.

19 Q Who was with you when you were in French Guyana?

20 A My husband.

21 Q All right you say one year, after one year did you leave French
22 Guyana?

23 A Yes, I did.

24 Q Can you describe why you didn't return to Haiti?

25 A I couldn't go back there because my family was being persecuted,
26 and I was persecuted there and I was afraid of what would happen

1 to me if I would go back.

2 Q Are you married?

3 A Yes.

4 IMMIGRATION JUDGE TO RESPONDENT:

5 Q Mrs. Noel now you say you went to French Guyana with your
6 husband. Your husband and four children. Is that right?

7 A My children were not with me in French Guyana.

8 MR. NAVERO TO RESPONDENT:

9 Q Do you love your children?

10 A Yes.

11 Q How old are they?

12 A 11, 12, 9, 8, 7.

13 Q Five children?

14 MR. SHADER TO RESPONDENT:

15 Q Four children, 11, 10, 9, 8?

16 MR. NAVERO TO RESPONDENT:

17 Q Why did you leave your children in Haiti?

18 A

19 Q Would you like to go back to be with your children?

20 A I would like to but I can't.

21 Q Why can't you?

22 A Because I am afraid.

23 Q Now is President Magliore the head of the family?

24 A

25 MR. SHADER: I object to that question.

26 IMMIGRATION JUDGE: He is not the head of her family. He is not even

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

related to her. Sustained.

IMMIGRATION JUDGE TO RESPONDENT:

Q When did you live with your father?

A When I was 8 years old when my father married Lucita Magloire Toussaint.

Q Now answer my question did you live with your father up until the time that you were 8 years old?

A Yes, sir.

Q And then you—

A I was brought up in the house of my father from the age of 8 until I finished my studies at the age of 18. My step-mother brought me up.

Q Your step-mother is?

A My step-mother.

Q And your real mother, where was she?

A My real mother and my father were never married.

IMMIGRATION JUDGE: Go ahead Mr. Navero.

MR. NAVERO TO RESPONDENT:

Q All right you in a sense are related...you were raised by your father?

MR. SHADER: I object I think that the record is clear, convincing and unequivocal.

MR. NAVERO: All right.

MR. NAVERO TO RESPONDENT:

Q Are you considered a member of the Magloire family?

MR. SHADER: Oh, I object.

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service
United States Department of Justice — Immigration and Naturalization Service

1 MR. NAVERO: She said my family Magloire.

2 IMMIGRATION JUDGE: Don't ask the same question again. You have asked
3 it five times already.

4 MR. NAVERO: May I ask it in another way?

5 IMMIGRATION JUDGE: No, you may not.

6 MR. NAVERO: May I ask a question.

7 MR. NAVERO TO RESPONDENT:

8 Q Was any of the members of the Magliore family persecuted?

9 A

10 MR. SHADER: I object to that.

11 MR. NAVERO: It's a matter of record.

12 IMMIGRATION JUDGE: Sustained.

13 IMMIGRATION JUDGE TO MR. NAVERO: Mr. Navero, no further question.

14 MR. NAVERO: That's correct.

15 IMMIGRATION JUDGE: Mr. Shader?

16 MR. SHADER: May I offer for the record letter from the State
17 Department dated April 10, 1974 in response to our letter which
18 is already marked in evidence.

19 IMMIGRATION JUDGE: Any objection, Mr. Navero?

20 MR. NAVERO: Your honor, the respondent should be allowed to explain
21 how she was allowed to obtain the passport.

22 IMMIGRATION JUDGE: Do you want to question her on that?

23 MR. NAVERO: Yes.

24 IMMIGRATION JUDGE: Go ahead Mr. Navero.

25 MR. NAVERO TO RESPONDENT:

26 Q When you left Haiti—

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 MR. SHADER: Pardon me may I offer this.

2 IMMIGRATION JUDGE: Yes, please do.

3 MR. SHADER: We offer for the observation of the Immigration Judge the
4 passport of the respondent.

5 IMMIGRATION JUDGE: He wants to question her on the evidence.

6 MR. SHADER: Yes.

7 IMMIGRATION JUDGE: Go ahead Mr. Navero.

8 MR. NAVERO: At this time your honor, in fairness to my client may I
9 reopen the question.

10 IMMIGRATION JUDGE: I have already said you may.

11 MR. NAVERO TO RESPONDENT:

12 Q How were you able to get the passport?

13 A I obtained the passport in Haiti. If a person is going from Haiti
14 to French Guyana, it is easier to get a passport because you don't
15 have any problem with the government. If I would have been asked
16 if
17 more/it was made out to the United States, then I would not get it
easily.

18 Q Now were there any other immediate members of your family persecuted?

19 A. I. ———

20 MR. SHADER: I object to that.

21 IMMIGRATION JUDGE: What day?

22 MR. NAVERO: immediate family——

23 MR. SHADER: Would you be more specific sir.

24 IMMIGRATION JUDGE: Yes, counsel so far no one has been persecuted.

25 MR. NAVERO TO RESPONDENT:

26 Q Were any members of your family persecuted?

1 A Yes, that was my father.

2 Q Was he ever persecuted, jailed or mistreated by the government?

3 A He was in prison for one month.

4 Q When?

5 A In 1963.

6 Q Who is Raoul Toussaint?

7 A That is my brother.

8 Q Was he ever in prison for any reason?

9 A Yes.

10 Q When?

11 A That was after my father was in prison in 1964.

12 Q For how long?

13 A My step-mother was in prison for one month and my brother, the one

14 that is in school was in prison for one week, and then released.

15 Q Where is he now?

16 A He lives in Canada.

17 Q Why is he in Canada?

18 MR. SHADER: I object to that.

19 MR. NAVERO TO RESPONDENT:

20 Q Where is he now?

21 A ———

22 IMMIGRATION JUDGE: She said Canada.

23 MR. NAVERO: Now let me ask her another question.

24 IMMIGRATION JUDGE: O.K.

25 MR. NAVERO TO RESPONDENT:

26 Q Now do you know why your brother is in Canada?

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1 MR. SHADER: I object to that.

2 A Because he left there for the same reason as I did and he can not
3 return to Haiti either.

4 IMMIGRATION JUDGE TO MR. SHADER: Go ahead Mr. Shader.

5 MR. SHADER TO RESPONDENT:

6 Q Now you say that you were brought up by your step-mother until
7 the age 18. Is that correct?

8 A Yes sir.

9 Q And thereafter did you have your own apartment?

10 A No, I was 25 years old when I got married.

11 Q After the age of 18 you were on your own. Is that correct?

12 A I stayed with my parents, because I was a school girl.

13 IMMIGRATION JUDGE TO RESPONDENT:

14 Q You say you stayed until you were 18 in your father's house then
15 where did you go?

16 A After that I went to the capital city go go own with my studies and
17 after that then I went back to the house with my father.

18 Q Mrs. Noel when were you married?

19 A I was married in 1962.

20 MR. SHADER TO RESPONDENT:

21 Q Now I have your passport which shows the name Moe. Fritzner Noel
22 Mariee.

23 A Yes, Noel is my married name that is the first name, Fritzner, of
24 my husband and the other name is my maiden name.

25 Q And did you obtain Visa De Sortie as on Page 9?

26 A Yes, I did.

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 MR. NAVERO: That's the exit permit from Haiti.

2 MR. SHADER: That is correct sir.

3 MR. SHADER TO RESPONDENT:

4 Q And this one is dated 3-7-68 which maybe July 3, 1968.

5 MR. NAVERO: It undoubtedly is July, 1968.

6 MR. SHADER: There is also a rubber stamp from the——

7 IMMIGRATION JUDGE: I will ask to give me copies of the passport pages.

8 The passport was incidentally valid for all countries. The passport
9 was good for coming to the United States as well as any other

10 country.

11 MR. SHADER: Yes, it is.

12 MR. SHADER TO RESPONDENT:

13 Q And did you also obtain this Bureau D'Identification Certificate
14 on 4/6/68?

15 A Yes, I did.

16 MR. SHADER: That is all at this time.

17 IMMIGRATION JUDGE: May I have a look at the passport please.

18 IMMIGRATION JUDGE TO RESPONDENT:

19 Q Do you have friends in the government?

20 A Yes.

21 Q How much did you pay him?

22 A He was a good friend of mine who was good enough to help me because
23 I was afraid to go by myself.

24 Q Up until the time that you left Haiti were you at any time for any
25 reason whatsoever mistreated?

26 A I had worked at this place. I had to leave but I was persecuted

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 there and after I stopped working I went home and I never left
2 my home.

3 Q I see. Now how were you persecuted?

4 A Through this woman where I was working. She was complaining that
5 I was a member of the Magloire family and they should not employ
6 me. They threw that at me and they caused me to loose the job that
7 I had. I lost it because I was the relative of the Magloire.

8 Q And then you went to Guyana? and I have a statement.

9 A Yes.

10 IMMIGRATION JUDGE: Anything further?

11 MR. HAVERO: No, your honor no further questions.

12 MR. SHADER TO RESPONDENT:

13 Q What was your job?

14 A Secretary.

15 IMMIGRATION JUDGE TO RESPONDENT:

16 Q How soon would you be ready to leave the United States if you were
17 granted voluntary departure?

18 A I did not quite understand you.

19 Q If I were to give you permission to leave voluntarily as your
20 attorney has asked, when would you be ready to leave?

21 A I can't leave. I can't go.

22 Q You mean you are not willing to leave voluntarily rather than being
23 deported?

24 A If I have to I would have to leave with just what's with me — if the
25 Judge says that I have to leave. I had no idea to go back to Haiti.
26 Because my brother is in Canada. I would go there.

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 IMMIGRATION JUDGE: All right anything else Mr. Navero?

2 MR. NAVERO: Not right now your honor.

3 IMMIGRATION JUDGE: All right the decision is reserved.

4 MR. SHADER: If I may just make one more——

5 IMMIGRATION JUDGE: Yes, sir, Mr. Shader.

6 MR. SHADER TO RESPONDENT:

7 Q Do you have any close relatives living in the United States?

8 A Yes, I have. I have a sister and I have a sister-in-law.

9 IMMIGRATION JUDGE: Anything else?

10 MR. SHADER: No further questions.

11 IMMIGRATION JUDGE: All right the decision is reserved.

12
13
14
15
16
17
18 I hereby certify that to the best of my knowledge and
19 belief the foregoing pages numbered 1 through 14
20 are a complete and accurate transcript of the above -
21 described proceedings.

22
23
24
25
26
Signature

Title

APPLICATION FOR RELIEF UNDER SECTION 243-H
OF THE IMMIGRATION AND NATIONALITY ACT AND
FOR STAY OF DEPORTATION IN THE EVENT I AM
ORDER DEPORTED

Roberte Noel, being duly sworn, deposes and
says:

That she is the above-mentioned alien.

My father was a captain in the last Government of President Magloire. He was arrested and put in jail. My younger brother was also taken away from his school and was arrested. His wife was arrested as well. I was working as a secretary. A young woman who worked in the same office went to tell the Secret Police that I should not be working in the same office because my father is an enemy of the Government. If they were to find me, the agents would throw me out of the office, beat me, slap me. As a result, I decided to leave my work. I could not live in Haiti any longer. Then, I decided to go to the French Guyana. My husband and I spent a year there. My husband decided to return to Haiti since he was not involved in the last Government; he was not persecuted. However, I

could not return, so I went to Georgetown and asked for a visa to come to the United States. When my husband returned to Haiti, on the same day, agents at the airport took away his passport. They wanted to investigate what he was doing outside of the country. Since, I made up my mind not to go back to Haiti. I left my four children in Haiti, but I realize that it is impossible for me to live in Haiti without being persecuted.

The above has been read to me in French. Ce qui precede m'a ete lu en Francais.

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

ORDER TO SHOW CAUSE and NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

In the Matter of

NOEL, ROBERTE nee TOUSSAINT

Respondent.

To: _____
(name)

File No. A20 095 134

230 West 76th Street, Room 811, New York, N.Y.

Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Haiti
and a citizen of Haiti;
3. You entered the United States at Miami, Florida on
or about October 27, 1969
(date);
4. At that time you were admitted as a nonimmigrant
visitor for pleasure and were thereafter authorized
to remain in the United States until July 25, 1970.
5. You remained in the United States after July 25, 1970
without authority.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(2) of the Immigration and Nationality Act, in that, after admission as a nonimmigrant under Sec. 101(a) (15) of said act you have remained in the United States for a longer time than permitted.

WHEREFORE, YOU ARE ORDERED to appear for hearing before a Special Inquiry Officer of the Immigration and Naturalization Service of the United States Department of Justice at _____
20 W Broadway, New York, N.Y., 14th floor
on April 13, 1973 (M) at 8:45 a.m., and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: March 27, 1973

IMMIGRATION AND NATURALIZATION SERVICE

Form I-221
(Rev. 3-30-67)

R-Reg Cal
(signature and title of issuing officer)
DEPUTY DISTRICT DIRECTOR
NEW YORK DISTRICT
(City and state)

(over)

PETITION FOR JUDICIAL REVIEW OF
ADMINISTRATIVE AGENCY ACTION

1. The United States Court of Appeals for the Second Circuit has jurisdiction of this petition under the provisions of Public Law 87-301, Sec. 106 of the Immigration and Nationality Act 8 U.S.C. 1105a.

2. That the petitioner resides in the City of New York, County of New York.

3. That respondent herein has its office within the jurisdiction of this Court.

4. Six months have not elapsed since the date of the final order from which review is sought.

5. That the petitioner is a citizen and native of Haiti. Mrs. Noel entered the United States on October 27, 1969.

6. That the petitioner has made an application for the withholding of deportation under Section 243-H of the Immigration and Nationality Act. She has stated under oath:

a. That her father was married to a sister of the former President of Haiti, Mr. Magloire,

b. That her father served as a captain during the incumbency of President Magloire,

c. That in 1963 she, her father and half brother were arrested by the Government of Francois Duvalier. This is the same Government which is in power at the present time in Haiti. The petitioner fears persecution if returned to Haiti because of the above.

7. That the Immigration Judge denied the application under Section 243-H of the petitioner and petitioner appealed to the Board of Immigration Appeals in Washington, D.C. The Board of Immigration Appeals on May 5, 1975 dismissed the appeal of the petitioner. See Exhibit "A" attached herewith.

8. That the petitioner was given until June 5, 1975 to leave the United States without being deported.

9. That the deportation of the petitioner would amount to a great miscarriage of justice as she would be subject to persecution in a country which is a dictatorship.

10. That the petitioner has exhausted all administrative remedies available to her as of the present time.

11. That if the departure of the petitioner was enforced, it would involve a constitutional question, involving among other matters to wit:

The denial of due process in that she was not granted a fair hearing since no evidence to the contrary was introduced at the deportation hearing.

WHEREFORE, the petitioner respectfully prays that this Court review the decision complained of and that the same be held null and void and set aside on the grounds that it is against the weight of evidence as no evidence was introduced contrary to the testimony of the petitioner and for such other and further relief as to this Court may seem just and proper.

LETTER TO DEPARTMENT OF STATE FROM DISTRICT
DIRECTOR DATED OCTOBER 11, 1973

Your recommendation is requested in the case of Roberte Toussaint Noel who has made application for political asylum.

Mrs. Noel, a native and citizen of Haiti, was born August 8, 1936 at Jeromie, Haiti. Her passport, number 6665-68, issued on July 3, 1968, was valid until July 2, 1969. On September 5, 1969 it was revalidated to September 4, 1974 by the Consulate General of Haiti at New York, New York. The passport contains a B-2 visa issued at Georgetown, Guyana on October 8, 1969.

Mrs. Noel entered the United States at Miami, Florida on October 27, 1969 as a visitor for pleasure. She was granted an extension of stay to July 25, 1970. On March 27, 1973, Mrs. Noel was placed under deportation proceedings under Section 241(a)(2) of the Immigration and Nationality Act, in that after admission as a nonimmigrant, she remained in the United States longer than permitted. A deportation hearing has been adjourned pending your recommendation on Mrs. Noel's application for asylum.

Mrs. Noel was interviewed at this office on October 10, 1973 regarding her application for political asylum. Mrs. Noel stated that she has two sisters who are lawful permanent residents of the United States, and a brother who is a student in Canada. Mrs. Noel's husband, Fritzner Noel, resides at Martissa 163, Port-au-Prince, Haiti with their four children. Mrs. Noel's mother, Belinance Giroult, resides with Fritzner and the four children. Mrs. Noel's father, Robespierre Toussaint, resides at Cap Haitian, Haiti with his wife, Lucita Magloire Toussaint. Mrs. Noel's mother and father were never married, and Mrs. Noel stated that her father's wife raised her. Mrs. Noel also has a younger brother, Jean Toussaint, who resides in Haiti.

Mrs. Noel stated that her father was a captain in the former government of President Magloire. Her father's wife is the sister of Magloire. For these reasons, Mrs. Noel's father, brother Jean, and father's wife were arrested by the government of Duvalier in 1963 or 1964. Her father and brother were automatically paroled but her father's wife was imprisoned for one

month. Mrs. Noel stated that her father and brother have to sign in at the police station daily and that her father cannot work because his permission to work was revoked. Mrs. Noel stated that she has never been arrested because she left her father's house and went to Port-au-Prince. Mrs. Noel's husband was also never arrested and he presently is working for an American company.

Mrs. Noel stated that in 1967, while she was employed as a secretary, a woman who worked in her office went to the Secret Police to tell them that she should not be working there because her father was an enemy of the government. Out of fear of any reprisals against her, Mrs. Noel fled to Guyana with her husband. They spent one year there and then Mrs. Noel's husband returned to Haiti. Mrs. Noel stated that her husband's passport was taken from him at the airport in Haiti upon his return. Mrs. Noel did not return to Haiti with him, but instead went to the United States. Mrs. Noel stated that while she was still in Guyana, she sent her passport to her cousin in New York in order to have him revalidate it for her.

Mrs. Noel stated that neither she nor her husband ever belonged to any political parties. When asked what would happen if she were forced to return to Haiti, Mrs. Noel stated that she would be killed. She further stated that to her knowledge, those of Magloire's relatives who left Haiti have never returned there.

LETTER TO IMMIGRATION AND NATURALIZATION
SERVICE FROM DEPARTMENT OF STATED DATED
APRIL 10, 1974.

Reference is made to your letter of October 11, 1973, concerning the request for refugee status of Mrs. Roberte Toussaint Noel, A20 095 134, a citizen of Haiti.

We do not believe Mrs. Noel has made a valid case for political asylum. To depart Haiti in 1968 she would have obtained a passport. This would indicate the Haitian Government had no political interest in her. Further, the activities of her father occurred in 1964 and until 1968, Mrs. Noel worked and resided in Haiti. Then at the height of Duvalier oppression she obtained a passport and exit permit to leave Haiti.

On the basis of the information thus far submitted, we are unable to conclude that Mrs. Noel should be exempted from regular immigration procedures on the grounds that she would suffer persecution on account of race, religion, nationality, political opinion, or membership in a particular social group should she return to Haiti. Should Mrs. Noel present additional information which ^{the} to/service seems to require further review, we will be glad to give further consideration to the case.

LETTER FROM DISTRICT DIRECTOR TO PETITIONER
DATED APRIL 17, 1974.

Reference is made to your request for political asylum filed on April 13, 1973, and further elaborated on October 10, 1973.

In consultation with the Department of State, this Service has determined that there is no basis for granting your request for political asylum.

Your application made previously under Section 243(h) will be considered at the time of your deportation hearing.



UNITED STATES ATTORNEY
COPY RECEIVED
1/19/76

James L. White (87)